

SUMMARY

Vector Broadcasting, Inc. ("Vector") has petitioned the Commission to grant an upgrade of its unbuilt station, WYUL(FM), Chateaugay, New York, from a Class A to a Class C2. This upgrade, if allowed, would thrust WYUL's signal into the community of Malone, New York, the community of license of WICY(AM) and WVNV(FM), licensed to L.C.C. Media, Inc. ("L.C.C."), the Commenter herein. Although the upgrade may be technically feasible, it would cause severe economic hardship for the precariously balanced Malone and Chateaugay radio markets to the ultimate detriment of local public interest service currently provided by WVNV and WICY. Unlike L.C.C.'s owner, James M. Coughlin, Jr., who has lived in Malone most of his life and consequently has strong local ties to the community, Vector's owner has no local residence or other connection with WYUL's community of license whatsoever. Vector's true intention is not to serve the communities of northern New York; instead, Vector's goal is to penetrate the Canadian market.

The Malone and Chateaugay markets cannot support the Class C2
radiation being proposed. The total annual retail trade in the

allotment policies of the 1980's soon will be modified because they arguably caused a ruinous proliferation of FM stations across the country. As has been well-documented, a majority of all radio stations are losing money. To help reverse this trend, the Commission should consider the economic effects that upgrades of unbuilt stations, such as this one, would have on local radio markets. This is the sort of economic impact analysis advocated by Chairman Quello, the National Association of Broadcasters and others.

Not only should the Commission deny Vector's upgrade on economic grounds, but it should also consider related public interest concerns. Vector's principal, Timothy D. Martz, lives halfway across the country from northern New York and will not be integrated into WYUL's management or the local community. This absentee ownership and management is likely to inhibit WYUL's responsiveness to the needs of the Chateaugay community at the same time that WYUL's upgraded facilities would erode L.C.C.'s ability to support its local programming. Martz has exhibited a pattern of acquiring stations all along the U.S./Canadian border with the intention of penetrating the Canadian market. He wants to link his stations by satellite and beam a common signal into Canada. He is entirely unfamiliar with the Chateaugay area and does not care about serving the community of license.

In sum, granting Vector's upgrade request would hurt an already-saturated radio market in northern New York to the ultimate detriment of the public interest.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
TABLE OF CONTENTS	iii
I. THE FCC SHOULD CHANGE CURRENT POLICY AND CONSIDER THE DETRIMENTAL ECONOMIC IMPACT ON EXISTING STATIONS WHEN CONSIDERING PROPOSED UPGRADES BY UNBUILT STATIONS	1
A. The Free Market Policies Of The 1980's Saturated FM Markets Nationwide	1
B. The Commission Has Recognized FM's Troubles And Is Poised To Restrict New FM Allotments And Upgrades	2
C. Economic Effects Should Be A Criterion In Upgrade Proceedings Involving Unbuilt Stations	4
II. VECTOR'S PROPOSED UPGRADE WOULD ADVERSELY AFFECT THE PRECARIOUSLY BALANCED MALONE MARKET	6
A. Vector's Proposed Upgrade Would Dramatically Strengthen WYUL's Signal In The Malone Market	6
B. The Malone Area's Economy Is Shrinking, Making It Harder For Businesses To Make A Profit	6

RECEIVED

JUN 21 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments,)	MM Docket No. 93-76
FM Broadcast Stations)	RM-8196
(Chateaugay, New York))	

To: Chief, Allocations Branch

COMMENTS

L.C.C. Media, Inc. ("L.C.C."), by its attorneys, pursuant to the Notice of Proposed Rule Making, DA-93-314, released April 8, 1993, hereby submits its Comments opposing the substitution of Channel 234C2 for Channel 234A at Chateaugay, New York, and the corresponding modification of station WYUL's construction permit as proposed by Vector Broadcasting, Inc., the permittee of WYUL. L.C.C. is the licensee of WVNV(FM) and WICY(AM), Malone, New York. As will be detailed herein, L.C.C. believes the proposed upgrade of WYUL's facilities would have a net detrimental effect on the public interest.

I. THE FCC SHOULD CHANGE CURRENT POLICY AND CONSIDER THE DETRIMENTAL ECONOMIC IMPACT ON EXISTING STATIONS WHEN CONSIDERING PROPOSED UPGRADES BY UNBUILT STATIONS

A. The Free-Market Policies Of The 1980's Saturated FM Markets Nationwide

Since the BC Docket 80-90 proceeding¹, the Commission has encouraged the addition of new FM allotments whenever technically feasible. Relying on the assumption that the broadcasting industry

¹ See Notice of Proposed Rule Making in BC Docket No. 80-90, 78 F.C.C. 2d 1235 (1980); see also Report and Order in BC Docket No. 80-90, 94 F.C.C. 2d 152 (1983).

would regulate itself in a "free-market" economy, the Commission chose not to take into consideration the economic effects of new allotments on existing facilities. By encouraging the unbridled proliferation of FM stations, the Commission arguably caused a ruinous saturation of FM markets across the country. Overcrowding especially hurt small and medium-sized markets where too much competition resulted in economic hardship and reduced public service.

In 1991, the National Association of Broadcasters ("NAB") released a study of the condition of the FM market nationwide. The study, entitled FM Station Financial Picture, revealed the stark reality that the Commission's good-intentioned free-market policies of the 1980's backfired. Instead of flourishing after being freed from the shackles of "burdensome regulations," FM stations were pushed to the edge of economic failure. In 1987, the average FM stand-alone station made \$80,045. However, in 1990, these stations lost an average of almost \$15,000, with one-fourth losing more than \$154,000. The average FM station has seen net revenues decline by 1% per year for the past several years. Taking inflation into account, profitability decreased 15% between 1987 and 1990. These losses began well in advance of the 1990 recession. The lethargy of the American economy merely exacerbated the already-weakened FM marketplace.

B. The Commission Has Recognized FM's Troubles And Is Poised

upgrades. For instance, in the radio multiple ownership rule-making proceeding², the Commission took into account the weakened economic condition of the radio industry when concluding it would raise the national radio ownership limit and relax the duopoly rule. The Commission aptly observed:

[In the Radio R&O, we] detailed the dramatic increase in competition and diversity in the radio industry over the last decade, noting that there are now over 11,000 radio stations in the United States. We observed as well that the number of non-radio outlets competing with radio stations for audiences and advertising revenue has risen substantially over the same period. . . . We concluded in the [Radio R&O] that this intense inter- and intra-industry competition has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters will be subject to increasingly severe economic and financial stress. We noted that between 1985 and 1990, the growth rate of radio stations dropped nearly in half to, on average, six percent, while real per station revenue during this period remained virtually unchanged. Operating profits, on a per station basis, have fallen dramatically since peaking in 1988, and radio's share of local advertising remained essentially flat throughout the 1980's. More than half of all radio stations lost money in 1990, and almost 300 stations are currently silent. Moreover, the [Radio R&O] found that the competitive changes producing this stress are not cyclical or transient in nature, but persistent and likely to create even greater pressure on radio broadcasters in the future. The picture is especially bleak for small market stations, which comprise the bulk of the industry. Given these circumstances, the Commission concluded that radio's ability to serve the public interest has been substantially threatened.

Radio Recon., 7 FCC Rcd at 6387-88 (emphasis added; footnote omitted).

At the recent NAB convention, Chairman Quello went a step

[I am] not too happy with radio's plight today. We must do something about it! First, we should consider proposals limiting the allocation of more licenses. We should thoroughly explore all possibilities of the NAB request for an FM freeze, especially at a time efforts are being made to develop in-band DAB. I'm afraid that in the FCC's quest for competition and diversity, we have over-saturated the market with radio stations to the point that over half cannot support themselves.

Future allocations must be more carefully controlled because broadcasters today face more challenges than ever before -- and new challenges are presented at an ever-accelerating rate. . . . [T]here are an increasing number of competitors for advertising dollars. They include not just broadcasters, but a growing array of specialty publications, music services and cable systems that often sell local ads at "radio rates."

Remarks of Chairman Quello before the NAB/RAB, at 3-4 (released April 19, 1993) (emphasis added).

Clearly, temblors of change are rumbling through the

The same should hold true in a case where an unbuilt station, such as WYUL, seeks an upgrade of facilities. Vector's proposed upgrade would have the same effect on northern New York's fragile broadcasting economy as allocating a new Class C FM station in Chateaugay. This situation is to be distinguished from situations where an existing station seeks to upgrade its facilities. An existing station already has a large financial investment in its station and is already competing in the local radio environment. Operating stations should not be hamstrung from developing the means to compete more effectively. Unbuilt stations, such as WYUL, have not yet begun to compete and are more closely aligned with would-be new entities than existing stations such as WVNV and WICY.

To prevent a further erosion of broadcasting's economic base, the Commission should require applicants for upgrades of unbuilt stations to submit a showing that the affected markets are strong enough economically to support the upgraded facilities. The Commission's analysis of this criterion could mirror the evaluation process it currently uses for technical feasibility. For instance, when a proposed station's frequency "short spaces" an existing station's frequency, and no accommodations are feasible, the Commission generally denies the application. L.C.C. proposes that the Commission adopt a similar evaluation process for "economic short spacing." Both concepts involve controlled competition for limited resources and avoid unnecessary interferences that ultimately would harm the pertinent communities. In the end, adopting such a criterion would better serve the public interest.

II. VECTOR'S PROPOSED UPGRADE WOULD ADVERSELY AFFECT THE PRECARIOUSLY BALANCED MALONE MARKET

A. Vector's Proposed Upgrade Would Dramatically Strengthen WYUL's Signal In The Malone Market

Malone is only 15 miles from Chateaugay, WYUL's community of license. In its Petition for Rule Making, Vector's engineering data makes it clear that, as a C2, WYUL will transmit an extremely strong signal into Malone market. Indeed, as a C2, Malone would be well within WYUL's proposed city-grade contour. There is no question that the enhanced signal would not only make WYUL a direct competitor with WVNV in the Malone market, but it would give WYUL a decided advantage in signal quality.³

B. The Malone Area's Economy Is Shrinking, Making It Harder For Businesses To Make A Profit

Chateaugay and Malone are two of the nineteen towns in Franklin County. The Franklin County Industrial Development Agency recently reported that total retail trade for the region amounts to roughly \$30 million annually. See Declaration of James M. Coughlin, Jr. at ¶ 1. Ten radio stations currently divide this retail revenue pie, the staple of radio advertising. Id. Retail growth actually shrank about one percent between 1980 and 1990. See Declaration at ¶ 3. Out of the five shopping centers in Malone, two are nearly empty, two are half empty and the newest has

³ It is to be noted that L.C.C. did not oppose the allotment of Channel 234A to Chateaugay. See Report and Order in MM Docket No. 89-101, RM-6654, 5 FCC Rcd 1348 (1990). Although WVNV and WICY endeavor to provide programming responsive to the needs of the Chateaugay community, L.C.C. believes that community is entitled to have its own radio station. L.C.C. simply believes it is a perversion of allocation policies to permit a community the size of Chateaugay (a population of 2528) to be used as a base for a C2 facility. As will be described in more detail, infra, Vector's true design is to reap the rewards of serving the Canadian market.

two vacancies out of eleven storefronts. Id. In addition, 39% of the local economy relies on the state government for employment. Id. In the current climate of government cutbacks, especially in recession-beleaguered New York State, the future does not bode well for government employees. In short, the Malone area economy is small, shrinking and fragile.

Ten radio stations currently serve Malone, four FM and six AM (including L.C.C.'s AM/FM combo WICY/WVNV). See Declaration at ¶ 1. Only WICY/WVNV are licensed to, and have main studios in, Malone. The other stations are in Plattsburgh and Massena, New York and Burlington, Vermont. Id.

Radio competes with other media for advertising dollars. Malone is served by one daily local newspaper, three out-of-town dailies and three weeklies. See Declaration at ¶ 2. Malone area residents are served by five television stations (including four network affiliates), and a local cable system with 6500 subscribers and 36 channels, all of which solicit local advertising. Id. Malone area residents also receive direct mail advertising and are exposed to outdoor ads as well. Id. In short, many media compete with radio for a diminishing amount of advertising money.

If WYUL is allowed to upgrade its facilities to a C2, such an



and WICY. See Declaration at ¶ 5. Each of these news broadcasts covers issues of local and regional concern. WVNV(FM) airs three additional news and public affairs broadcasts each weekday and one additional broadcast on Saturdays and Sundays. Id. Also, L.C.C. encourages local churches to broadcast their Sunday services once a week. Id. This programming is in addition to countless hours of public service announcements aired on WVNV and WICY each year. In sum, L.C.C.'s local public service programming is exemplary.

L.C.C.'s ability to continue to produce substantial amounts of quality public service programming will be threatened if WYUL's signal bursts into Malone. Historically, the first personnel to be laid off in lean financial times are the news and public service staff. Stations also will cut ad rates and will frequently try to fill air time previously reserved for PSAs with revenue-producing

considerations when making licensing decision. Policy Statement On Comparative Broadcast Hearings, 5 R.R.2d 1901 (1965). In that Policy Statement the Commission held that an applicant who lived in or near the community of license, participated in local civic affairs and had full-time, daily involvement with station operations would bring important public interest benefits which applicants who did not bring those elements to the proposed operation of the station would not. Id. James M. Coughlin, Jr., the President and principal owner of L.C.C. serves as the station's General Manager. See Declaration at ¶4. He also is a long-time resident of Malone, New York. Id. He has lived in the Malone area for twenty-five years and has been associated with WVNV's AM sister station, WICY, for twenty-four years. Id. Mr. Coughlin's civic activities in Malone include: Director, Malone Chamber of Commerce; Member, Malone Rotary Club; Member, Franklin County Agricultural Society; Member, Malone Lodge of Elks. Id. In addition, the other shareholders, officers and directors of L.C.C. are also residents of Malone. Id. The Vice President of L.C.C., Mr. Richard LeVigne, is a life-long, fifty-year resident of Malone and is involved with the following civic organizations: Franklin County Industrial Development Agency; Malone Chamber of Commerce; Malone Hotel, Motel and Restaurant Association; and Alice Hyde Hospital Association. Id.

As General Manager, Mr. Coughlin is responsible for all aspects of running WVNV including: supervising news coverage of local events such as school board meetings, producing local public service announcements for such organizations as the local Rotary Club, and encouraging local public access such as broadcasts of

church services in Malone. See Declaration at ¶¶ 5, 6. Because Mr. Coughlin and L.C.C.'s other officers and shareholders are natives of Malone, they are made aware of the needs and concerns of the Malone community on a daily basis. Their integration into the Malone community enables the station to provide service which is responsive to the needs of the community.

B. WYUL's Owner Is Not And Never Will Be Integrated Into The Chateaugay Community

Timothy D. Martz is the sole officer, director and 90% shareholder of Vector Broadcasting, Inc., permittee of WYUL, Chateaugay, New York. Martz is a resident of Chagrin Falls, Ohio. See Exhibit B. He owns all or most of several broadcast stations including: WPBW(FM), Presque Isle, Maine; WFST(AM), Caribou, Maine; WZNL(FM), Norway, Michigan; WENL(FM), Gladstone, Michigan; WXNL(FM), Baraga, Michigan; WFNL(FM), Sturgeon Bay, Wisconsin; WBTI(FM), Lexington, Michigan; WKNW-FM, Canaan, Vermont; WBFX(FM), Grand Marais, Minnesota; KYWG(FM), Sarles, North Dakota; and WYSS(FM) and WKNW-AM, Sault Saint Marie, Michigan. L.C.C. assumes, without knowing with certainty, that Martz does not manage the day-to-day operations of his facilities. Id. He is certainly not integrated into the Chateaugay community and is never unlikely to

Here, the Commission should take into consideration the fact that Martz lives halfway across the country and is not integrated into the local community. The Commission should contrast Marts's absentee ownership with L.C.C.'s exemplary community involvement and leadership.⁴

C. Vector's True Goal Is Gaining Canadian Marketshare, Not Serving The Communities Of Northern New York

Martz has at least a majority ownership interest in thirteen radio stations in ten communities in the northern United States. See Exhibit B. Seven of those stations are within fifty miles of the Canadian border. Each of these border communities is within a few miles of Canadian population centers which are equal or greater in population size than the U.S. domestic population. In each case, these stations' signals are, or soon will be, capable of penetrating into these Canadian population centers.

In the attached Declaration, Mr. Coughlin has sworn under oath that he met Martz in March of 1992 in Nashville, Tennessee, and Martz revealed to him his intention of acquiring stations along the Canadian border with the sole purpose of penetrating Canadian markets. See Declaration at ¶ 7. Martz also told Mr. Coughlin that his goal was to link his stations by satellite and broadcast a common signal into Canada. Id. In that conversation, Martz

⁴ L.C.C. is certainly not advocating a new basic qualification as a licensing criterion. Certainly there are many group owners that operate responsive stations. The contrast between L.C.C.'s commitment to its stations' community of license and Martz's apparent lack of commitment is offered, however, as one additional element the Commission should consider in determining whether the public interest would be best served by a stronger WYUL at the expense of the service provided by WVNK and WICY.

seemed completely unfamiliar with the Chateaugay area and had no intention of becoming involved in those communities.

It is clear from his actions and words that Martz has no

interested in penetrating Canadian markets then he is in serving his community of license. For all of these reasons, the Commission should not grant Vector's petition for rule making.

Respectfully submitted,

L.C.C. MEDIA, INC.

By:


Gerald Stevens-Kittner
Robert M. McDowell

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June 1, 1993

Its Attorneys

EXHIBIT A

Declaration of James M. Coughlin, Jr.

DECLARATION

I, James M. Coughlin, Jr., President of L.C.C. Media, Inc., licensee of WVNV(FM), Malone, New York, hereby declare, under penalty of perjury, that the following statements are true and correct to the best of my knowledge and belief.

1. In May of 1993, I learned from the Franklin County Industrial Development Agency ("FCIDA") and the U.S. Census Bureau

vacancies out of eleven storefronts. Furthermore, 39% of the local economy relies on the state government for employment.

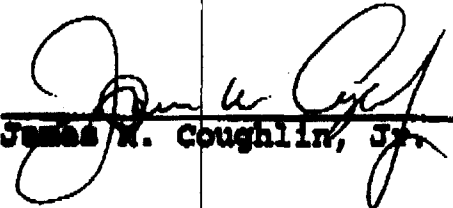
4. Additionally, I am the President of L.C.C. and General Manager of WVNV(FM) and WICY(AM). I am also a resident of Malone, New York. I have lived in the Malone area for twenty-five years and have been associated with AM station WICY for twenty-four years. My civic activities and positions in Malone include: Director, Malone Chamber of Commerce; Member, Malone Rotary Club; Member, Franklin County Agricultural Society; Member, Malone Lodge of Elks. The other shareholders, officers and directors of L.C.C. are also residents of Malone. The Vice President of L.C.C., Mr. Richard LeVigne, is a life-long, fifty-year resident of Malone and is involved with the following civic organizations: Franklin County Industrial Development Agency; Malone Chamber of Commerce; Malone Hotel, Motel and Restaurant Association; and Alice Hyde Hospital Association.

5. As General Manager of WICY and WVNV, I know that WICY produces ten news broadcasts daily, Monday through Friday, and two each day on the weekends. WVNV(FM) airs three additional news and public affairs broadcasts each weekday and one additional broadcast on Saturdays and Sundays. Also, WICY allows local churches to broadcast their Sunday services once a week. WICY and WVNV solicit commentary and opinion from local officials as well as the general public on local issues. WICY and WVNV encourage public access to their broadcasts. WICY and WVNV broadcast countless hours of public service announcements annually.

6. I am responsible for all aspects of running WVNV and WICY including: supervising news coverage of local events

such as school board meetings, producing local public service announcements for such organisations as the local Rotary Club, and encouraging local public access such as broadcasts of church services in Malone.

7. Furthermore, in March of 1992, I met Timothy D. Marts, the principal of Vector Communications, in Nashville, Tennessee. At that time, Mr. Marts revealed to me that he intended to acquire stations along the Canadian border with the purpose of penetrating Canadian markets. Mr. Marts also told me that his goal was to link his stations by satellite and broadcast a common signal into Canada. Mr. Marts was completely unfamiliar with the Malone/Chateaugay, New York area and appeared to have no intention of becoming involved in those communities.


James M. Coughlin, Jr. *

* Original signature to be supplied.

EXHIBIT B

United States of America
Federal Communications Commission
Washington, D. C. 20554

Ownership Report

NOTE: Before filling out this form, read attached instructions

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control (except to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

1. All of the information furnished in this Report is accurate as of

May 15, 19 92

(Date must comply with Section 73.3615(a), i.e., information must be current within 60 days of the filing of this report, when 1(a) below is checked.)

This report is filed pursuant to Instruction (check one)

1(a) ☒ Annual 1(b) ☐ Transfer of Control or Assignment of License 1(c) ☐ Other

for the following stations:

Call Letters	Location	Class of service
WYSS(FM) WKNW-AM	Sault Ste. Marie, MI Sault Ste. Marie, MI	FM AM

2. Give the name of any corporation or other entity for whom a separate Report is filed due to its interest in the subject licensee (See Instruction 3):

NONE

3. Show the attributable interests in any other broadcast station of the respondent. Also, show any interest of the respondent, whether or not attributable, which is 5% or more of the ownership of any other broadcast station or any newspaper or CATV entity in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules.

NONE

CERTIFICATION

I certify that I am President

(Official title, see Instruction 1)

of Algoma Broadcasting Co.

(Exact legal title or name of respondent)

that I have examined this Report, that to the best of my knowledge and belief, all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in Item 1 and in no event prior to Item 1 date):



(Signature)

May 27, 19 92

(Date)

Telephone No. of respondent (include area code):

216-498-1221

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001.

Name and Post Office Address of respondent:

Algoma Broadcasting Co.
c/o Timothy D. Martz
5595 Liberty Road
Chagrin Falls, OH 44022

4. Name of entity, if other than licensee or permittee, for which report is filed (see Instruction 3):

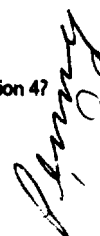
NONE

5. Respondent is:

- ☐ Sole Proprietorship
☒ For-profit corporation
☐ Not-for-profit corporation
☐ General Partnership
☐ Limited Partnership
☐ Other: _____

If a limited partnership, is certification statement included as in Instruction 4?

☐ Yes ☐ No



6. List all contracts and other instructions required to be filed by Section 73.3613 of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
Articles of Incorporation & ByLaws (on file)	-	February 11, 1986	Perpetual
Pledge Agreement (on file)	Timothy D. Martz & The Central Trust Company, N.A.	March 12, 1990	Until bank

8. List officers, directors, cognizable stockholders or partners. Use one column for each individual or entity. Use additional pages, if necessary. See Instructions 4, 5, and 6.

Line (Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of officer, director, cognizable stockholder or partner (If other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interest.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.
8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules, including the nature and size of such interests and the position held.

1	(a) Timothy D. Martz 5595 Liberty Road Chagrin Falls, OH 44022	(b)	(c)
2	U.S.		
3	President, Secretary, Treasurer, Sole Director		
4	100		
5	100		
6	90%		
7	See Exhibit 1		
8	None		

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assess compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, will use the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974,
5 U.S.C. 552(d)(3) AND THE PAPERWORK REDUCTION ACT P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.